

**U. S. District Court
Western District of Arkansas (Harrison)
CIVIL DOCKET FOR CASE #: 3:18-cv-03040-TLB**

Stebbins v. Hixson et al
Assigned to: Honorable Timothy L. Brooks
Case in other court: Arkansas Eastern, 4:17-cv-00711
Cause: 42:1983 Civil Rights Act

Date Filed: 04/02/2018
Date Terminated: 05/08/2018
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

David A. Stebbins

represented by **David A. Stebbins**
123 W. Ridge Street
Apt D
Harrison, AR 72601
870-204-6516
PRO SE

V.

Defendant

Kenneth Hixson

represented by **Christine A. Cryer**
Office of the Arkansas Attorney General
323 Center Street
Suite 1100
Little Rock, AR 72201-2610
(501) 683-0958
Fax: (501) 682-2591
Email: christine.cryer@arkansasag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

David Glover

represented by **Christine A. Cryer**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Phillip Whiteaker

represented by **Christine A. Cryer**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Arkansas, State of

represented by **Christine A. Cryer**
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Email All Attorneys (Primary Address)

Email All Attorneys (Primary and Secondary Address)

Date Filed	#	Page	Docket Text
10/31/2017	<u>1</u>		MOTION for Leave to Proceed in forma pauperis, by David A Stebbins. (mcz) [Transferred from ared on 4/2/2018.] (Entered: 10/31/2017)
10/31/2017	<u>2</u>		COMPLAINT with Jury Demand against All Defendants, filed by David A Stebbins. (mcz) [Transferred from ared on 4/2/2018.] (Entered: 10/31/2017)
11/01/2017	<u>3</u>		ORDER referring this case to United States Magistrate Judge Jerome T. Kearney for consideration and determination of all pre-trial matters and for recommended disposition for the resolution of any dispositive matters. Signed by Judge James M. Moody Jr. on 11/1/2017. (ljb) [Transferred from ared on 4/2/2018.] (Entered: 11/01/2017)
11/28/2017	<u>4</u>		ORDER granting <u>1</u> Plaintiff's motion for leave to proceed in forma pauperis. Plaintiff may proceed without payment of fees and cost or security therefore. Signed by Magistrate Judge Jerome T. Kearney on 11/28/2017. (lmc) [Transferred from ared on 4/2/2018.] (Entered: 11/28/2017)
12/11/2017	<u>5</u>		MOTION for Marshal Service, by David A Stebbins. (kdr) [Transferred from ared on 4/2/2018.] (Entered: 12/11/2017)
12/11/2017	<u>6</u>		AMENDED COMPLAINT with Jury Demand against All Defendants, filed by David A Stebbins.(kdr) [Transferred from ared on 4/2/2018.] (Entered: 12/11/2017)
12/18/2017	7		(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>5</u> Motion for Order. The Clerk of Court shall prepare a summons for the Defendants and the United States Marshal is directed to serve a copy of the Complaint (Doc. No. 2), Amended Complaint (Doc. No. 6), and summons on the Defendants and the Arkansas Attorney General, without prepayment of fees and costs or security therefore. Signed by Magistrate Judge Jerome T. Kearney on 12/18/2017. (kam) [Transferred from ared on 4/2/2018.] (Entered: 12/18/2017)
12/19/2017			Summons Issued as to All Defendants and forwarded to the U.S. Marshal for service. (cmn) [Transferred from ared on 4/2/2018.] (Entered: 12/19/2017)
01/08/2018	<u>8</u>		SUMMONS Returned Executed. Arkansas, State of, served on 1/3/2018. (scw) [Transferred from ared on 4/2/2018.] (Entered: 01/09/2018)
01/08/2018	<u>9</u>		SUMMONS Returned Executed. Phillip Whiteaker served on 1/3/2018. (scw) [Transferred from ared on 4/2/2018.] (Entered: 01/09/2018)
01/08/2018	<u>10</u>		SUMMONS Returned Executed. David Glover served on 1/3/2018. (scw) [Transferred from ared on 4/2/2018.] (Entered: 01/09/2018)
01/08/2018	<u>11</u>		SUMMONS Returned Executed. Kenneth Hixson served on 1/3/2018. (scw) [Transferred from ared on 4/2/2018.] (Entered: 01/09/2018)

01/10/2018	<u>12</u>		Summons Returned Unexecuted as to Arkansas, State of, c/o Arkansas Attorney General. (fjg) [Transferred from ared on 4/2/2018.] (Entered: 01/10/2018)
01/24/2018	<u>13</u>		NOTICE of Appearance by Christine A. Cryer on behalf of David Glover, Kenneth Hixson, Phillip Whiteaker (Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 01/24/2018)
01/24/2018	<u>14</u>		MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by David Glover, Kenneth Hixson, Phillip Whiteaker (Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 01/24/2018)
01/24/2018	<u>15</u>		BRIEF IN SUPPORT re <u>14</u> Motion to Dismiss for Failure to State a Claim filed by David Glover, Kenneth Hixson, Phillip Whiteaker. (Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 01/24/2018)
01/31/2018	<u>16</u>		ORDER directing the Clerk of Court to prepare another summons for the States of Arkansas and directing the U.S. Marshal to serve a copy of <u>2</u> Complaint and Summons on the Governor without prepayment of fees and costs or security. Signed by Magistrate Judge Jerome T. Kearney on 1/31/2018. (mef) [Transferred from ared on 4/2/2018.] (Entered: 01/31/2018)
01/31/2018	<u>17</u>		MOTION and Incorporated Brief in Support Thereof for Default as to State of Arkansas by David A Stebbins (jap) [Transferred from ared on 4/2/2018.] (Entered: 01/31/2018)
01/31/2018			Summons Reissued as to Arkansas, State of and forwarded to the U.S. Marshal for service. (mef) [Transferred from ared on 4/2/2018.] (Entered: 01/31/2018)
02/07/2018	<u>18</u>		RESPONSE in Opposition re <u>17</u> MOTION for Order filed by David Glover, Kenneth Hixson, Phillip Whiteaker. (Attachments: # <u>1</u> Exhibit Unexecuted Summons in Case 4:16CV00878 (later removed to Western District 3:17CV03016))(Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 02/07/2018)
02/08/2018	<u>19</u>		RESPONSE in Opposition to <u>14</u> Motion to Dismiss filed by David A Stebbins. (ljb) [Transferred from ared on 4/2/2018.] (Entered: 02/08/2018)
02/08/2018	<u>20</u>		BRIEF IN SUPPORT of <u>19</u> Response in Opposition to Motion filed by David A Stebbins. (ljb) [Transferred from ared on 4/2/2018.] (Entered: 02/08/2018)
02/12/2018	<u>21</u>		SUMMONS Returned Executed. Arkansas, State of served on 2/8/2018. (fjg) [Transferred from ared on 4/2/2018.] (Entered: 02/13/2018)
02/21/2018	<u>22</u>		NOTICE of Appearance by Christine A. Cryer on behalf of Arkansas, State of (Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 02/21/2018)
02/21/2018	<u>23</u>		MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Arkansas, State of (Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 02/21/2018)
02/21/2018	<u>24</u>		BRIEF IN SUPPORT re <u>23</u> Motion to Dismiss for Failure to State a Claim filed by Arkansas, State of. (Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 02/21/2018)
03/07/2018	<u>25</u>		RESPONSE in Opposition re <u>23</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by David A Stebbins. (kdr) [Transferred from ared on

			4/2/2018.] (Entered: 03/07/2018)
03/13/2018	<u>26</u>		REPLY to Response to Motion re <u>23</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Arkansas, State of. (Cryer, Christine) [Transferred from ared on 4/2/2018.] (Entered: 03/13/2018)
03/21/2018	<u>27</u>		SURREPLY in Response to 026 Reply to 025 Response in Opposition to State of Arkansas' Motion to Dismiss filed by David A Stebbins re <u>26</u> <u>25</u> (jap) [Transferred from ared on 4/2/2018.] (Entered: 03/21/2018)
04/02/2018	<u>28</u>	6	ORDER: The interests of justice will be best served by transferring this case to the United States District Court for the Western District of Arkansas. The Clerk of Court is directed to immediately transfer Plaintiff's case file to the Western District of Arkansas, Harrison Division, John Paul Hammerschmidt Federal Building, 35 East Mountain Street, Room 510, Fayetteville, Arkansas 72701. Signed by Judge James M. Moody Jr. on 4/2/2018. (mcz) [Transferred from ared on 4/2/2018.] (Entered: 04/02/2018)
04/02/2018	<u>29</u>		Case transferred in from District of Arkansas Eastern; Case Number 4:17-cv-00711. Docket sheet received. (Entered: 04/02/2018)
04/02/2018	<u>30</u>		Magistrate Notice/Consent Furnished (src) (Entered: 04/02/2018)
04/03/2018	<u>31</u>		MOTION to Transfer for lack of proper venue by David A. Stebbins. (tg) (Entered: 04/03/2018)
05/08/2018	<u>32</u>	7	OPINION AND ORDER granting <u>14</u> Motion to Dismiss for Failure to State a Claim and granting <u>23</u> Motion to Dismiss for Failure to State a Claim. IT IS FURTHER ORDERED that Plaintiff David A. Stebbins is CAUTIONED against filing lawsuits in the Eastern District of Arkansas when the venue for those lawsuits is more properly laid in the Western District of Arkansas. See Opinion and Order for specifics. Signed by Honorable Timothy L. Brooks on May 8, 2018. (tg) Modified on 5/8/2018 (src). (Entered: 05/08/2018)
05/08/2018	<u>33</u>	13	JUDGMENT dismissing case with prejudice re <u>32</u> Opinion and Order. Signed by Honorable Timothy L. Brooks on May 8, 2018. (cc: U.S. Marshals Service-Certified).(tg) (Entered: 05/08/2018)
05/11/2018	<u>34</u>		MOTION and Brief for Reconsideration and to Recuse re <u>31</u> MOTION to Transfer Case, MOTION for Recusal by David A. Stebbins. (tg) (Entered: 05/11/2018)
05/11/2018	35	14	TEXT ONLY ORDER denying <u>34</u> Motion for Reconsideration. Plaintiff has identified no manifest error of law in the Court's order, nor has he cited any newly discovered facts or legal precedent that would otherwise justify the Court's reconsideration. With respect to Plaintiff's request that the undersigned reopen the case, recuse himself from it, and reassign it to another judge in this District, that request is denied. Finally, with respect to Plaintiff's request that the undersigned recuse himself from any and all future lawsuits that Plaintiff may file, that request is also denied. Cf. Stebbins v. State of Ark., 2017 WL 1929659, at *6 (W.D. Ark. May 9, 2017) ("Once again, Stebbins confuses lack of merit with ill motivation."). Signed by Honorable Timothy L. Brooks on May 11, 2018. (ee) Modified on

			5/16/2018 to add proper citation (ee). (Entered: 05/11/2018)
06/07/2018	<u>36</u>	15	NOTICE OF APPEAL as to <u>33</u> Judgment by David A. Stebbins. (src) (Entered: 06/07/2018)
06/07/2018	<u>37</u>		MOTION for Leave to Appeal in forma pauperis by David A. Stebbins. (src) (Entered: 06/07/2018)
06/07/2018			MOTIONS REFERRED: <u>37</u> MOTION for Leave to Appeal in forma pauperis. Motions referred to Honorable Erin L. Wiedemann.(src) (Entered: 06/07/2018)
06/08/2018	<u>38</u>		RESPONSE IN OPPOSITION TO Motion re <u>37</u> MOTION for Leave to Appeal in forma pauperis filed by Arkansas, State of, David Glover, Kenneth Hixson, Phillip Whiteaker. (Cryer, Christine) (Entered: 06/08/2018)
06/11/2018	<u>39</u>	18	ORDER denying <u>37</u> Motion for Leave to Appeal in forma pauperis filed by David A. Stebbins. Signed by Honorable Timothy L. Brooks on June 11, 2018. (tg) (Entered: 06/11/2018)
06/20/2018	<u>40</u>		MOTION for Relief of Judgment by David A. Stebbins. (src) (Entered: 06/20/2018)
06/20/2018	41	19	TEXT ONLY ORDER denying <u>40</u> Motion for Relief from Judgment. The Motion reveals neither law nor facts that would justify relief pursuant to Fed. R. Civ. P. 60(b). Signed by Honorable Timothy L. Brooks on June 20, 2018. (ee) (Entered: 06/20/2018)
07/05/2018	<u>42</u>	20	NOA SUPPLEMENT FORM re <u>36</u> Notice of Appeal filed by David A. Stebbins. (src) (Entered: 07/05/2018)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DAVID A. STEBBINS

PLAINTIFF

V.

CASE NO. 4:17-CV-00711-JM-JTK

HIXSON ET AL.

DEFENDANTS

ORDER

Plaintiff David A. Stebbins is suing the defendants, alleging that his rights were violated during multiple court proceedings in Boone County Circuit Court and the subsequent appeal of those proceedings to the Arkansas Court of Appeals. (DE # 2) The interests of justice will be best served by transferring this case to the United States District Court for the Western District of Arkansas because Boone County, Arkansas is located in the Western District of Arkansas and it appears from the facts of this case that all the facts alleged occurred there. Pursuant to 28 U.S.C. § 1404(a), a district court may transfer any civil action, for the convenience of parties and witnesses and in the interest of justice, where it might have been brought.

The Clerk of Court shall immediately transfer Plaintiff's case file to the Western District of Arkansas, Harrison Division, John Paul Hammerschmidt Federal Building, 35 East Mountain Street, Room 510, Fayetteville, Arkansas 72701.

IT IS SO ORDERED this 2nd day of April, 2018.


UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION**

DAVID A. STEBBINS

PLAINTIFF

V.

CASE NO. 3:18-CV-03040

**KENNETH HIXSON; DAVID GLOVER;
PHILLIP WHITEAKER; and STATE OF ARKANSAS**

DEFENDANTS

OPINION AND ORDER

Now before the Court are three ripe motions: a Motion to Transfer (Doc. 31), filed by Plaintiff David A. Stebbins, a Motion to Dismiss (Doc. 14) filed by Defendants Kenneth Hixson, David Glover, and Phillip Whiteaker, and a Motion to Dismiss (Doc. 23) filed by Defendant State of Arkansas.¹ The Court will consider and resolve all three Motions in the following discussion.

By way of background, this case was transferred to this District on April 2, 2018, see Doc. 28, by the Honorable James M. Moody, Jr., United States District Judge for the Eastern District of Arkansas. In the transfer order, Judge Moody noted that the interests of justice would best be served by transferring the case to this District because the majority of facts occurred in Boone County, which is located in the Western District of Arkansas. Plaintiff also resides in Boone County. On April 3, 2018, Mr. Stebbins filed a Motion to Transfer the matter back to the Eastern District, see Doc. 31, arguing

¹ A fourth motion, one for default as to Defendant State of Arkansas, was also filed by Mr. Stebbins, see Doc. 17. The State of Arkansas contends it was not properly served, but it nevertheless filed a responsive pleading in this matter and has been actively litigating this case. The Motion (Doc. 17) is **DENIED** without further discussion. "The Federal Rules of Civil Procedure commit the entry of a default judgment against a party to the sound discretion of the trial court." *Fed. Trade Comm'n v. Packers Brand Meats, Inc.*, 562 F.2d 9, 10 (8th Cir. 1977) (per curiam).

that venue is not proper in the Western District, and that the majority of facts actually occurred in Little Rock, which is in the Eastern District.

After consideration of the Motion to Transfer (Doc. 31), it is hereby **DENIED**. Judge Moody's decision to transfer the case to this District was, indeed, in the interests of justice, for the reasons given in the transfer order and for the following reasons, as well. 28 U.S.C. § 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." Here, the Plaintiff resides in the Western District, and he suffered all alleged injuries in this District. In addition, the facts in the instant case are directly related to and flow from the claims he made in a prior lawsuit brought against the State of Arkansas and the Boone County Circuit Court Clerk in Case Number 3:17-CV-0316, which the undersigned presided over and dismissed with prejudice on April 14, 2017.²

Further, the Court believes that the only reason why Mr. Stebbins filed the instant lawsuit in the Eastern District, when, for the reasons stated above, it clearly should have been filed in the Western District, was either to avoid judicial review by the undersigned, who is very familiar with these facts, or to avoid the filing restrictions that were imposed upon him by the Honorable P.K. Holmes, III, Chief United States Judge for the Western District of Arkansas, in *David A. Stebbins v. Rita F. Stebbins and David D. Stebbins*,

² The Court of Appeals for the Eighth Circuit summarily affirmed this Court's order of dismissal on October 3, 2017. See *David A. Stebbins v. State of Ark. and Boone Cnty. Circuit Court Clerk*, Case No. 3:17-CV-03016, Doc. 63-1.

Case No. 3:12-CV-03130, Doc. 10. These filing restrictions limit Mr. Stebbins to filing one federal lawsuit in the Western District of Arkansas per every three calendar months. They further enjoin him from filing any such lawsuit unless he first: (1) posts a \$100 refundable bond with the Clerk of Court (to be forfeited if the case fails to pass a pre-screening review for frivolousness or for failure to state a claim, or if Mr. Stebbins fails to behave in accordance with Federal Rule of Civil Procedure 11), (2) attaches to his complaint a copy of the order imposing the filing restrictions, and (3) attaches a signed affirmation that states the date of his most recent prior filing of a new case in this District. See *id.* at 6.³ For all of these reasons, venue is properly laid in this District, and the Court will now turn to the matter of Defendants' Motions to Dismiss.

In the case at bar, Mr. Stebbins claims that three Arkansas Court of Appeals judges—Defendants Hixson, Glover, and Whiteaker—violated his statutory and constitutional rights when they jointly denied a motion he filed in his appellate case, *David A. Stebbins v. David D. Stebbins*, Case No. CV-16-16 (Ark. Ct. App. 2017). The motion in question concerns the mandate that was issued in the case by the Arkansas Court of Appeals on September 6, 2017. According to the opinion accompanying the mandate, the Court of Appeals determined that it lacked jurisdiction to hear Mr. Stebbins's appeal, since "a final order [of the trial court] ha[d] not been entered disposing of all the claims."

³ The Court of Appeals for the Eighth Circuit affirmed these filing restrictions on September 26, 2014, observing that "Stebbins has proceeded in forma pauperis on at least sixteen complaints that proved meritless, and has filed numerous frivolous motions, since May 2010" *Stebbins v. Stebbins*, Case No. 3:12-CV-03130, Doc. 36-1, p. 2.

Soon after the mandate entered, the trial court reopened Mr. Stebbins's case, and a new judge was assigned to the matter. But on September 27, 2017, Mr. Stebbins filed before the Court of Appeals a motion and brief to enforce the Court's mandate. Even though Mr. Stebbins was aware that his case had been reopened at the trial court level, he nonetheless asked the Court of Appeals "to issue whatever writs, orders, or sanctions it feels appropriate in order to enforce its mandate on September 6, 2017," and to "caution" the new presiding judge that Mr. Stebbins is "entitled to due process of law." The Court of Appeals briefly denied Mr. Stebbins's motion on October 25, 2017. Mr. Stebbins responded by filing the instant lawsuit against the Court of Appeals judges who presided over his appeal, and against their employer, the State of Arkansas. The lawsuit, filed on October 31, 2017, claims that when Judges Hixson, Glover, and Whiteaker denied his motion to enforce the mandate, they and/or the State of Arkansas engaged in First Amendment retaliation in violation of 42 U.S.C. § 1983, and in retaliation pursuant to the American with Disabilities Act (as Mr. Stebbins is disabled).

On November 1, 2017, the trial court judge who had been assigned to Mr. Stebbins's case issued a final, appealable order as to the disposition of all claims. Rather than simply appeal this final order to the Court of Appeals, Mr. Stebbins elected instead to file a second motion to enforce the mandate on November 3, 2017. The second motion was also denied. Since then, Mr. Stebbins has doggedly persisted in litigating the instant claims against the judges and the State in federal court.

The facts above speak for themselves. This case is frivolous and will be dismissed with prejudice. Not only has Mr. Stebbins failed to state any claims for which

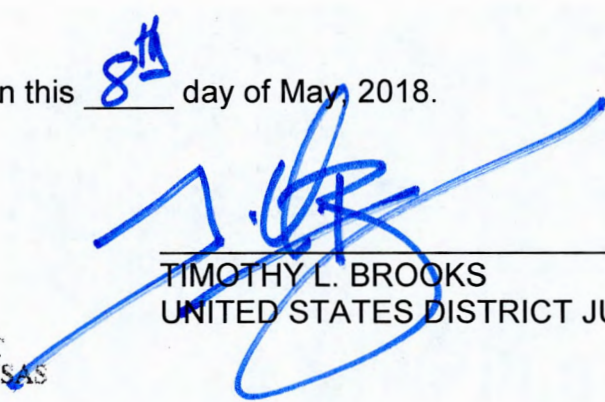
relief may be granted as per Rule 12(b)(6), but he has also sued three appellate court judges and the State of Arkansas without regard to the fact that the judges are immune from suit for performing functions in their judicial capacities—as the Defendants did here, when they denied Mr. Stebbins's motions in his appellate case. See *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (explaining judicial immunity). As for Mr. Stebbins's claims against the State, he references a “longstanding vendetta” against him by “[t]he State of Arkansas, and all of her employees,” due, allegedly, to the State's “disdain” for his habit of filing lawsuits. (Doc. 2, p. 4). Section 1983 claims for damages are not cognizable against a state, absent its explicit consent to suit, due to the sovereign immunity conferred by the Eleventh Amendment. *Quern v. Jordan*, 440 U.S. 332, 338-45 (1979). Moreover, Mr. Stebbins's demand that the Court issue “an everlasting injunction against the State of Arkansas” to protect him against all perceived future wrongs that the government and its employees may commit against him is, in a word, ludicrous.

IT IS THEREFORE ORDERED that the Motion to Dismiss (Doc. 14) filed by Defendants Kenneth Hixson, David Glover, and Phillip Whiteaker, and the Motion to Dismiss (Doc. 23) filed by Defendant State of Arkansas are both **GRANTED**. This case is **DISMISSED WITH PREJUDICE**, and a final judgment will enter for the reasons stated in this Opinion.

IT IS FURTHER ORDERED that Plaintiff David A. Stebbins is **CAUTIONED** against filing lawsuits in the Eastern District of Arkansas when the venue for those lawsuits is more properly laid in the Western District of Arkansas. The Court finds that

Mr. Stebbins's recent practice of filing lawsuits in the Eastern District and waiting for them to be transferred to the Western District is a transparent end-run around this Court's filing restrictions, which were imposed on him in Case Number 3:12-CV-03130, Doc. 10. If he continues this practice, he may be subject to further sanctions, including, but not limited to, the immediate dismissal of any future complaints that are filed by him in the Eastern District and then transferred to the Western District due to improper venue.

IT IS SO ORDERED on this 8th day of May, 2018.


TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED

MAY 08 2018

DOUGLAS F. YOUNG, Clerk
By

Deputy Clerk

US DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

MAY 08 2018

DOUGLAS F. YOUNG, Clerk
By Deputy Clerk

DAVID A. STEBBINS

PLAINTIFF

V.

CASE NO. 3:18-CV-03040

KENNETH HIXSON; DAVID GLOVER;
PHILLIP WHITEAKER; and STATE OF ARKANSAS

DEFENDANTS

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that for the reasons stated in the Opinion and Order filed this date, the case is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED AND ADJUDGED on this 8th day of May, 2018.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

MIME-Version:1.0
From:NEF@arwd.uscourts.gov
To:NEF@localhost.localdomain
Bcc:
--Case Participants: Christine A. Cryer (agcivil@arkansasag.gov, christine.cryer@arkansasag.gov, kelly.rowland@arkansasag.gov), Honorable Timothy L. Brooks (tlbinfo@arwd.uscourts.gov)
--Non Case Participants: Chambers - TLBinfo@arwd.uscourts.gov (tlbinfo@arwd.uscourts.gov)
--No Notice Sent:

Message-Id:1641738@arwd.uscourts.gov
Subject:Activity in Case 3:18-cv-03040-TLB Stebbins v. Hixson et al Order on Motion for Recusal
Content-Type: text/html

U. S. District Court

Western District of Arkansas

Notice of Electronic Filing

The following transaction was entered on 5/11/2018 at 5:43 PM CDT and filed on 5/11/2018

Case Name: Stebbins v. Hixson et al

Case Number: 3:18-cv-03040-TLB

Filer:

WARNING: CASE CLOSED on 05/08/2018

Document Number: 35(No document attached)

Docket Text:

TEXT ONLY ORDER denying [34] Motion for Reconsideration. Plaintiff has identified no manifest error of law in the Court's order, nor has he cited any newly discovered facts or legal precedent that would otherwise justify the Court's reconsideration. With respect to Plaintiff's request that the undersigned reopen the case, recuse himself from it, and reassign it to another judge in this District, that request is denied. Finally, with respect to Plaintiff's request that the undersigned recuse himself from any and all future lawsuits that Plaintiff may file, that request is also denied. Cf. State of Ark., 2017 WL 1929659, at *6 (W.D. Ark. May 9, 2017) ("Once again, Stebbins confuses lack of merit with ill motivation."). Signed by Honorable Timothy L. Brooks on May 11, 2018. (ee)

3:18-cv-03040-TLB Notice has been electronically mailed to:

Christine A. Cryer christine.cryer@arkansasag.gov, agcivil@arkansasag.gov,
kelly.rowland@arkansasag.gov

3:18-cv-03040-TLB Notice has been delivered by other means to:

David A. Stebbins
123 W. Ridge Street
Apt D
Harrison, AR 72601

US DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

JUN 07 2018

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF ARKANSAS

By DOUGLAS F. YOUNG, Clerk

Deputy Clerk

DAVID A. STEBBINS

PLAINTIFF

VS.

CASE NO. 3:18-cv-03040

KENNETH HIXSON, DAVID GLOVER,
PHILLIP WHITEAKER, AND THE STATE OF ARKANSAS

DEFENDANTS

NOTICE OF APPEAL

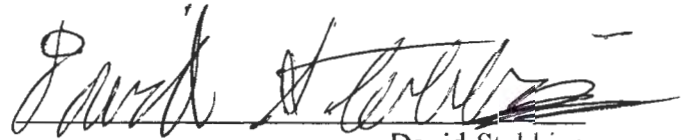
Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Notice of Appeal in the above-styled action.

1. The United States District Court for the Eastern District of Arkansas abused its discretion by moving the case to the Western District.
2. The United States District Court for the Western District of Arkansas abused its discretion by denying the Motion to Transfer Venue. The only grounds for venue being proper in the Western District was, according to him, that *some* of the actions that were relevant to this case (actions that were not even the focus of this case, but rather, were collateral to it) occurred inside the Western District. That alone does not justify overriding the Plaintiff's choice of venue when nearly every other factor in determining venue was in favor of the Eastern District.
3. The United States District Court for the Western District of Arkansas committed reversible error when it granted the Defendants' Motion to Dismiss for Failure to State a Claim, not on the grounds that the factual allegations in the Complaint did not amount to a cognizable claim, but rather, because he did not believe that I, as Plaintiff, would be able to prove the facts as they were listed in the Complaint. This is explicitly forbidden on a Motion to Dismiss for failure to state a claim; see *Conley v. Gibson*, 355 US 41 (1957).
4. In issuing its order dismissing this case with prejudice, Western District Judge Timothy

Brooks freely admitted that he (A) was familiar with my previous litigation history, and (B) used this previous litigation history as a factor in his judgment. Therefore, he has a bias against me and should have recused himself. He committed an abuse of discretion and reversible error when he did not do so.

5. The United States District Court for the Western District of Arkansas committed an abuse of discretion when it denied my Motion for Reconsideration without giving any explanation whatsoever for the denial.

So notified on this, the 2nd day of June, 2018.

A handwritten signature in black ink, appearing to read 'David Stebbins', is written over a horizontal line.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com



RECEIVED
WD/AR

JUN 07 2018

U.S. DISTRICT COURT

David Stebbins
123 W. Ridge St.,
ATP D
Harrison, AR 72601

U.S. District Court
35 East Mountain Street, Room 510
Fayetteville, Arkansas 72701-5354

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

DAVID A. STEBBINS

PLAINTIFF

V.

CASE NO. 3:18-CV-3040

KENNETH HIXSON, et al.

DEFENDANTS

ORDER

Currently before the Court is Plaintiff's Application for Leave to Appeal In Forma Pauperis ("IFP"). (Doc. 37). On May 8, 2018, the Court dismissed Plaintiff's complaint for failure to state a claim. (Docs. 32, 33.) "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). As was discussed in detail in the Opinion and Order (Doc. 32) dismissing Plaintiff's complaint, Plaintiff's claims are frivolous, and he has named Defendants that are immune from suit. Accordingly, any appeal would not be taken in good faith.

Plaintiff's Application for Leave to Appeal IFP (Doc. 37) is, therefore, **DENIED**. Plaintiff may, of course, renew his motion for leave to appeal IFP with the Court of Appeals for the Eighth Circuit. See Fed. R. App. P. 24(a)(5).

IT IS SO ORDERED on this 11th day of June, 2018.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

MIME-Version:1.0
From:NEF@arwd.uscourts.gov
To:NEF@localhost.localdomain
Bcc:
--Case Participants: Christine A. Cryer (agcivil@arkansasag.gov, christine.cryer@arkansasag.gov, kelly.rowland@arkansasag.gov), Honorable Timothy L. Brooks (tlbinfo@arwd.uscourts.gov)
--Non Case Participants: Chambers - TLBinfo@arwd.uscourts.gov (tlbinfo@arwd.uscourts.gov)
--No Notice Sent:

Message-Id:1656626@arwd.uscourts.gov
Subject:Activity in Case 3:18-cv-03040-TLB Stebbins v. Hixson et al Order on Motion for Relief
Content-Type: text/html

U. S. District Court

Western District of Arkansas

Notice of Electronic Filing

The following transaction was entered on 6/20/2018 at 1:55 PM CDT and filed on 6/20/2018

Case Name: Stebbins v. Hixson et al

Case Number: 3:18-cv-03040-TLB

Filer:

WARNING: CASE CLOSED on 05/08/2018

Document Number: 41(No document attached)

Docket Text:

TEXT ONLY ORDER denying [40] Motion for Relief from Judgment. The Motion reveals neither law nor facts that would justify relief pursuant to Fed. R. Civ. P. 60(b). Signed by Honorable Timothy L. Brooks on June 20, 2018. (ee)

3:18-cv-03040-TLB Notice has been electronically mailed to:

Christine A. Cryer christine.cryer@arkansasag.gov, agcivil@arkansasag.gov,
kelly.rowland@arkansasag.gov

3:18-cv-03040-TLB Notice has been delivered by other means to:

David A. Stebbins
123 W. Ridge Street
Apt D
Harrison, AR 72601

**U.S. COURT OF APPEALS - EIGHTH CIRCUIT
NOA SUPPLEMENT**

Please note any additions or deletions to the style of the case from the style listed on the docket sheet or attach an amended docket sheet with the final style of the case.

Western District of Arkansas - HARRISON DIVISION

18-3040, DAVID STEBBINS v. KENNETH HIXSON

Length of Trial: N/A

Financial Status: Fee Paid? Yes No **XX**

If NO, has IFP been granted? Yes No **XX**

Is there a pending motion for IFP? Yes No **XX**

Are there any other post-judgment motions? Yes No **XX**

Please identify the court reporter.

If no court reporter, please check

Name **DANA HAYDEN**
Address 35 E MOUNTAIN, ROOM 559
FAYETTEVILLE, AR 72701

Telephone Number 479-6954460

CRIMINAL CASES ONLY:

Is the defendant incarcerated? Yes No **XX**

Place of confinement, if known:

Please list all other defendants in this case, if there were multiple defendants.

SPECIAL COMMENTS: